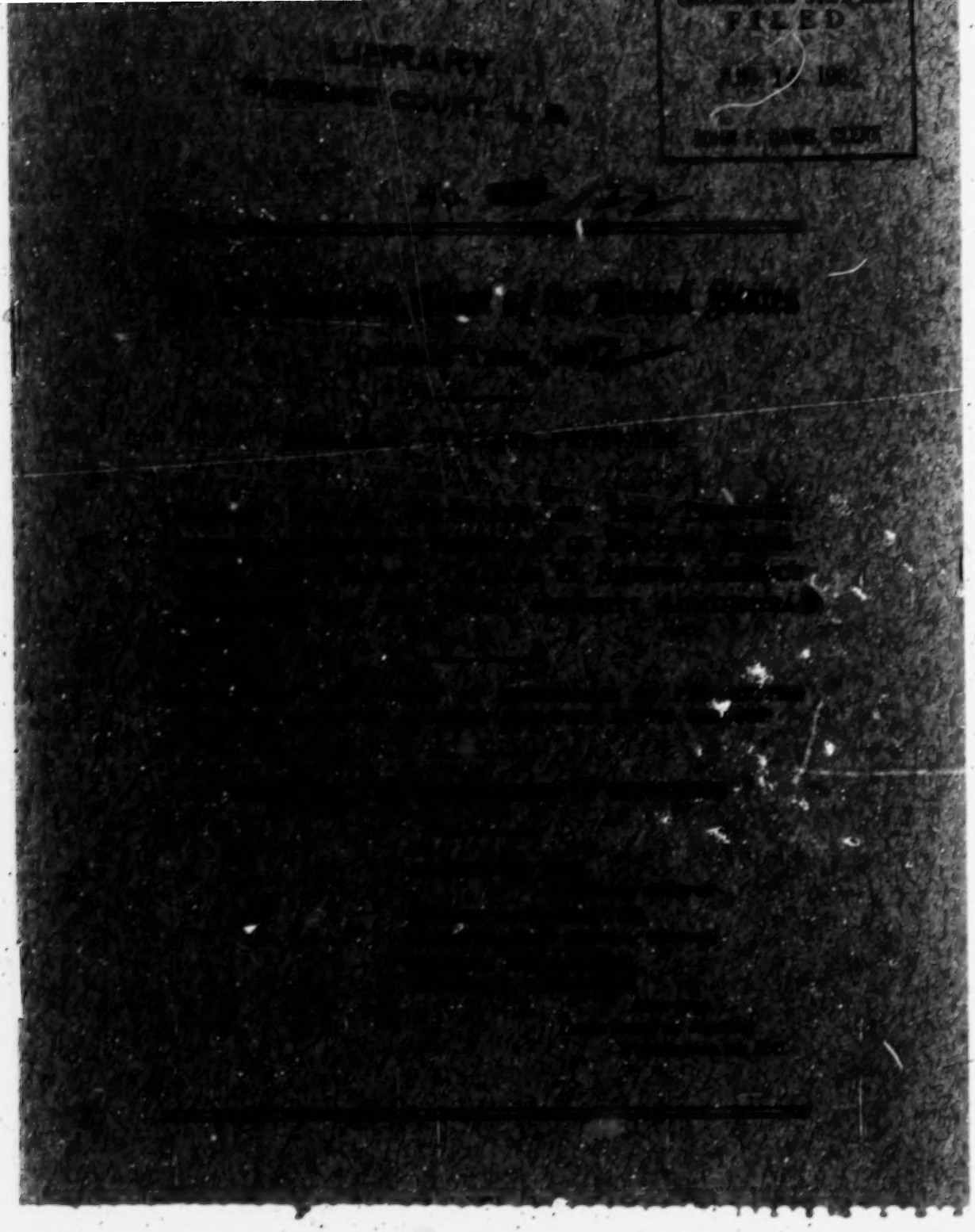
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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 975

EDWARD J. WELLENS, PETITIONER

v.

DOUGLAS DILLON, SECRETARY OF THE TREASURY; ABRAHAM RIBICOFF, SECRETARY OF HEALTH, EDUCATION, AND WELFARE; CHARLES H. SHREVE, DISTRICT MANAGER; AND THE SOCIAL SECURITY ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of dismissal entered by the district court (R. I,[1] p. 3) is not reported, and the *per curiam* opinion of affirmance by the court of appeals (R. II, p. 3) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 6, 1962 (R. II, p. 5). Petitioner's "Juris-

[1] The record certified by the clerk of the court of appeals to this Court consists of 2 typewritten volumes. Record references to the two volumes will be cited as "R. I" and "R. II," respectively.

dictional Statement" or "Alternative Application for Certiorari" (p. 18) was filed May 15, 1962. Since this is not a proper case for appeal, we are responding to the document filed by petitioner as we would to a petition for certiorari. This Court's jurisdiction over such a petition rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in view of petitioner's failure to follow the exclusive judicial review procedure prescribed by Section 205 (g) and (h) of the Social Security Act, both courts below properly refused to set aside the administrative denial of his claim for benefits under that Act.

STATUTE INVOLVED

In pertinent part, Sections 203(b) and 205 (g) & (h) of the Social Security Act, as amended, 42 U.S.C. (Supp. II) 403(b) and 405 (g) & (h), provide:

> [§ 203] (b) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—
>
> (1) such individual's benefit or benefits under section 402 of this title for any month, and
>
> (2) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such indi-

vidual's wages and self-employment income, if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (1) and (2). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. * * *

[§ 205] (g). Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of its answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive and where a claim has been denied by the Secretary or a decision is

rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(h) The findings and decisions of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing.

> No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 41 of Title 28 to recover on any claim arising under this subchapter.

STATEMENT

In November of 1959 petitioner, then 65 years old, applied for social security old age insurance benefits (R. I, pp. 28–29). On February 1, 1961, he was advised by the Bureau of Old Age and Survivors Insurance (1) that he was eligible for old age insurance benefits of $81.00 per month as of November 1959; (2) that no such benefits were payable to him for the years 1959 and 1960 because of his employment or self-employment during that period; (3) that no benefits were presently due him because he was then working and expected his earnings to exceed $1,200 in the year 1961; and (4) that he could ask for reconsideration of this decision within six months thereof (R. I, p. 25).

On February 8, 1961, petitioner requested reconsideration (R. I, p. 25). On the following day, however, without awaiting the disposition of that request, he filed a request for a hearing before a hearing examiner (R. I, p. 25). This request was dismissed by the hearing examiner on April 7, 1961 on the ground that it was premature, since the Bureau had not yet ruled on petitioner's request for reconsideration of its original decision (R. I, p. 25). On April 10, 1961, the Bureau affirmed its previous decision (R. I, p.

25). At the same time petitioner was advised that if he believed the reconsideration determination to be incorrect he could apply for a hearing before a hearing examiner of the Social Security Administration (R. I, p. 25).

On April 14, 1961, petitioner filed a request for such a hearing (R. I, p. 25). This hearing was held on June 14, 1961 (R. I, p. 25). On June 20, 1961, the examiner ruled that petitioner had earnings from self-employment in 1960 in excess of $2080 and that therefore his benefits for the year 1960 were subject to deductions as provided in section 203(b) of the Act, pp. 2–3, *supra* (R. I, pp. 25–26).

Meanwhile, on March 15, 1961, prior even to the Bureau's reconsideration of its original decision, petitioner instituted the present action for a writ of mandamus in the United States District Court for the Northern District of California. In this action he sought to compel respondents to pay him the old age insurance benefits to which he claimed he was entitled (R. I, pp. 28–33). Respondents moved to dismiss the complaint, asserting *inter alia* that the review procedure provided for in Section 205(g) of the Act, pp. 3–4, *supra*, is exclusive and that mandamus is therefore not available to a claimant seeking to challenge an administrative denial of social security benefits. On September 11, 1961, the district court granted the government's motion to dismiss the complaint (R. I, p. 3).

On appeal, the court of appeals affirmed in a *per curiam* opinion. It held that mandamus would not lie because the exclusive method of judicial review

in social security cases such as this was that provided by Section 205(g) of the Act. The court noted that Section 205(h) made exclusive the statutory remedy prescribed by Section 205(g) and that hence "it was proper to dismiss the present proceedings" (R. II, p. 4).

ARGUMENT

Both courts below, in denying petitioner's claim, properly applied settled principles governing judicial review of administrative action. Moreover, there is no substance to the constitutional issue petitioner seems to suggest. There is no conflict of decisions and we submit that review by this Court is not warranted.

1. By resorting to mandamus, petitioner has attempted to invoke a review procedure not prescribed by Sections 205 (g) and (h) of the Social Security Act. Section 205(h) explicitly provides that administrative decisions under the Social Security Act are not reviewable "except as * * * provided" in the Act. Even in the absence of such an express exclusivity provision, it is clear that the review procedure prescribed by Section 205 of the Act would be deemed exclusive and hence a bar to relief by way of mandamus. See *Myers* v. *Bethlehem Corp.*, 303 U.S. 41, 48–50; *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 404; *City of Tacoma* v. *Taxpayers*, 357 U.S. 320, 339. Accordingly, both courts below were plainly correct in rejecting petitioner's application for a writ of mandamus.

2. While the substance of his complaint here, as in the court below, is unclear, petitioner apparently con-

tends that it is unconstitutional to withhold social security benefits because of his earnings from self-employment; as required by the deduction provisions of Section 203(b) of the Act, pp. 2–3, *supra*. But constitutional arguments similar to, and no less meritorious than, those relied on by petitioner have already been considered and rejected by this Court. *Flemming* v. *Nestor*, 363 U.S. 603; see also *Price* v. *Flemming*, 280 F. 2d 956 (C.A. 3), certiorari denied, 365 U.S. 817. There is, we submit, no substance to any of petitioner's constitutional contentions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the "Jurisdictional Statement" should be treated as a petition for a writ of certiorari and that, so considered, it should be denied.

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